

No. PD-0887-21

In the
Texas Court of Criminal Appeals
At Austin

FILED
COURT OF CRIMINAL APPEALS
1/3/2022
DEANA WILLIAMSON, CLERK

No. 01-20-00859-CR

In the Court of Appeals for the
First District of Texas
At Houston

No. 1685846

In the 230th District Court
Of Harris County, Texas

EX PARTE MICHAEL LOWRY

STATE'S MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR DISCRETIONARY REVIEW

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

THE STATE OF TEXAS, pursuant to Tex. R. App. P. 10.1, 10.5(b) and 68.2(c), moves for an extension of time within which to file a Petition for Discretionary Review. In support of its motion, the State submits the following:

1. Appellant was charged by indictment with possession of lewd visual material depicting a child. He filed a petition for pretrial writ of habeas corpus alleging that Texas Penal Code Section 43.262 is unconstitutional. The trial court denied habeas relief.
2. On October 26, 2021, a panel of the First Court of Appeals issued a published opinion that reversed the trial court's denial of habeas relief and remanded the case to the trial court to dismiss the indictment.

3. No motion for rehearing was filed.
4. On November 30, 2021, this Court granted the State's first motion for extension of time to file a petition for discretionary review.
5. The State's petition for discretionary review was due on December 30, 2021.
6. The State seeks a one-day extension to December 31, 2021 to file its petition for discretionary review.
7. The following facts are relied upon to show good cause for the requested extension:
 - i. The undersigned attorney attempted to e-file the State's petition for discretionary review on December 30, 2021 multiple times before the midnight filing deadline. However, the e-file system was experiencing significant delays which prevented the undersigned attorney from uploading and submitting the State's petition prior to the filing deadline.
 - ii. The undersigned attorney was able to submit the State's petition for discretionary review successfully on December 31, 2021 at 12:11 a.m.
8. This motion for extension is not made for purposes of delay, but that the issues in this case can be addressed completely and properly in briefing to this Court.

WHEREFORE, the State prays that this Court will grant a one-day extension of time to December 31, 2021 for the undersigned attorney to complete and file the State's petition for discretionary review. The State further prays that this Court will accept the State's petition for discretionary review that has already been submitted in this case.

Respectfully submitted,

/s/ Patricia McLean

PATRICIA MCLEAN

Assistant District Attorney

Harris County, Texas

1201 Franklin, 6th floor

Houston, Texas 77002

(713) 274-5826

FAX No. (832) 927-0180

State Bar No. 24081687

McLean_Patricia@dao.hctx.net

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument will be sent by e-filing to:

Jonathan Landers
Neal Davis
Attorneys for Appellant
Jlanders.law@gmail.com
neal@nealdavislaw.com

Stacey Soule
State Prosecuting Attorney
information@spa.texas.gov

/s/ Patricia McLean
PATRICIA McLEAN
Assistant District Attorney
Harris County, Texas
1201 Franklin, 6th floor
Houston, Texas 77002
(713) 274-5826
FAX No. (832) 927-0180
State Bar No. 24081687
McLean_Patricia@dao.hctx.net

Date: December 31, 2021

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Associated Case Party: Michael Lowry

Name	BarNumber	Email	TimestampSubmitted	Status
Jonathan Landers		Jlanders.law@gmail.com	12/31/2021 2:04:45 AM	SENT
Neal Davis		neal@nealdavislaw.com	12/31/2021 2:04:45 AM	SENT

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule		information@spa.texas.gov	12/31/2021 2:04:45 AM	SENT